IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5637 OF 1988

1. Indubai Rama Gholap
Occ.household r/a 46, Ghorpadi
Bazar, Pune 411 001 ..
2. Shri Vijaykumar Rama Gholap
age 38 yrs. Occ.service r/a as above ..
3. Shri Dipak Rama Gholap
age 26 yrs. Occ.service r/a as above ..
4. Shri Anil Rama Gholap
age 23 yrs. r/a as above ..
5. Shri Suresh Rama Gholap, age 19
yrs Occ.Education r/a as above .. Petitioners.

Vs.

1. Shri Badrinarayan Mangilal Ghiya
since deceased by his heirs and
representatives,
1A. Mathurabai Badrinarayan Ghiya ..
1B. Vijya Badrinarayan Ghiya ..
1C. Arun Badrinarayan Ghiya ..
1D. Anil Badrinarayan Ghiya ..
All R/o 28, Ghorpadi Bazar,
Pune - 1. .. Respondents.

Mr.P.J.Shinde for the petitioners.
Mr.C.G.Parulekar for the respondents.

CORAM : D.B.BHOSALE, J.
DATED : 18TH JANUARY, 2007

ORAL JUDGMENT:

. This writ petition under Article 227 of the Constitution of India is directed against the concurrent findings recorded by the courts below in a suit filed by the respondent-landlord for eviction on the ground available under section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Act"). Mr.Shinde, learned counsel for the petitioner-tenant at the outset pressed this petition only on the point of hardship.

That apart, even otherwise the findings recorded by the courts below holding that the respondent-plaintiff requires the suit premises reasonably and bonafide for their personal use and occupation warrant no interference. In view thereof I consider the point of comparative hardship contemplated under section 13(2) of the Act.

2. There is no dispute that family of the plaintiff and the defendant are very large. The family of the plaintiff at the relevant time was consisting of the plaintiff himself, his wife, three married sons and their spouses, three children each of two married sons and one son of the third son. In all the members of the family of the plaintiff are 14. As against this the defendant has 13 members in his family consisting of three married sons, their spouses, children and two unmarried sons. It has come on record that the plaintiff was staying in a rented premises bearing house no.28, Ghordpadi Bazar, Pune consisting of one room and one shed. The appeal court in its judgment in paragraph 11, in detail, has considered the point of bonafide requirement and has held that the need of the plaintiff is bonafide and reasonable. From perusal of the findings of facts recorded by the trial Court as well as the first appeal Court I find absolutely no reason to interfere with the same.

3. Mr.Shinde, learned counsel for the petitioner vehemently submitted that the plaintiff had filed two suits prior to the present suit no.686 of 1981. The earlier suits were filed on the same ground. There is no dispute that the second regular civil suit no.2358 of 1971 was also filed for eviction for personal bonafide requirement. That suit was initially decreed and in the appeal, filed by the defendant-tenant, the judgment and decree of the trial Court was set aside. Admittedly, in the second suit the issue of bonafide requirement was answered in the affirmative. However, the appeal court allowed the appeal on the point of comparative hardship holding that greater hardship would be caused to the tenant than the landlord. The present suit was filed in 1981 on the same grounds. Mr.Shinde, learned counsel for the petitioner-tenant submitted that looking to the financial condition of the petitioner-tenant the court below ought to have dismissed the suit on the point of comparative hardship. He further submitted that there was absolutely no change of circumstances after the date of dismissal of the earlier suit and the present suit. He invited by attention to the record to contend that three sons of the petitioner were working on very meagre salary and therefore, it was not possible for the petitioner-tenant to acquire alternate accomodation. My attention was also drawn to the

tenant’s admission that she could not afford to acquire alternate accomodation.

4. I perused the evidence of the petitioner-tenant as also the findings recorded by the appeal court in paragraph 12 of the judgment, holding that greater hardship would be caused to the landlord. It is true that in the earlier suit the point of comparative hardship was decided against the respondent-landlord. However, after 10 years of dismissal of the earlier suit the present suit was filed and during this period size of the family of the landlord increased a lot which is evident from the observations made in paragraph 11 and 12 of the judgment. Mr.Shinde, learned counsel for the petitioner-tenant has not disputed that size of the family of the landlord has considerably increased. However, he submitted that financial condition of the tenant has not improved and that she was not in a position to acquire alternate accomodation. From perusal of evidence of the petitioner-tenant it is clear that she had not stated in her evidence as to what efforts she made to acquire alternate accomodation. She had simply stated that she cannot afford to pay Pagadi or deposit for acquiring a rented accomodation. Except the bare words nothing is brought on record in support of her claim. She did not state as to what efforts were made, how much

Pagadi was either demanded or one required to pay for acquiring an accomodation. It is now well settled that if a tenant does not indicate in his evidence as to what steps he had taken to find an alternate accomodation then in that case mere statement that it is difficult to get accomodation in the area would not be a ground for depriving the landlord of his rights under statute on the presumed difficulties. Both the courts below have considered this aspect in proper prespective and have categorically recorded the concurrent findings that greater hardship would be caused by refusing the decree and hence they proceeded to decree the suit. Considering the extremely limited jurisdiction of this court under section 100 of the Code of Civil Procedure to disturb the findings of fact and as I find that there is sufficient material on record to sustain those findings, in my opinion, the appeal deserves to be dismissed and is dismissed as such. No order as to costs. At this stage Mr.Shinde, learned counsel for the petitioner-tenant prayed for sufficient time to vacate the suit premises. Considering the overall facts and circumstances of the case I am inclined to grant time to the petitioner-tenant to vacate the suit premises till 31st December, 2007 subject to the petitioner and all adult members in the family, who are residing in the premises, file usual undertaking within six weeks from today, failing which, it will

be open for the respondent-landlord to execute the decree.

(D.B.Bhosale, J.)